THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 6968 of 2007

Dated: 22.10.2007

Between:

Integrated Rural Health, Women and Child
Education Department Society (IRHWCEDS)
Rep., by its Secretary, A. Chenna Reddy
Hyderabad.

... Petitioner

AND

The State of Andhra Pradesh, rep., by its
Principal Secretary, Medical and Health Dept.,
Secretariat Buildings, Hyderabad & another.

... Respondents

Counsel for the petitioner : Shri M. Subba Reddy

Counsel for respondent No.2 : Shri Laxminarasimha

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ORDER:-

This writ petition is filed for a writ of Mandamus to declare the proceedings dated 12.03.2007 in Rc.No.2218/Aids/BS/2006-07 and consequential proceedings dated 30.03.2007 of respondent No.2 as illegal, arbitrary and violative of principles of natural justice.

The petitioner society was evidently entrusted with the work of supplying Lab Technicians and other categories of staff as required by the Project Director, Andhra Pradesh State Aids Control Society, Hyderabad (for short 'the Project Officer'). The petitioner claims that a Memorandum of Understanding (for short 'the MOU') was entered into with the Project Director on 03.05.2002 and since then he is supplying the required personnel in accordance with the MOU. A show cause notice was issued on 12.03.2007 by the Project Director, wherein it was mentioned that there is no validly signed MOU existing between the petitioner and the Andhra Pradesh Aids Control Society and that the petitioner has not conducted any review meetings with regard to the performance of Lab Technicians to improve their quality. It was also alleged in the notice that the petitioner has been taking 5% commission from the salaries of the Lab Technicians. It was further mentioned in the notice that the respondents decided that

the salaries of the Lab Technicians for the month of March, 2007 onwards will not be paid through the petitioner- society. The Project Director by his proceedings dated 30.03.2007 communicated to the petitioner that the services of all the Lab Technicians working in the petitioner's agency on contract basis were deemed to have been terminated with effect from 31.03.2007. Questioning the said two proceedings, the petitioner filed the present writ petition.

Sri M. Subba Reddy, learned counsel for the petitioner submitted that though the petitioner's society was functioning in accordance with MOU dated 03.05.2002, termination of the Lab Technicians supplied by it is illegal.

Dr. K. Laxminarsimha, learned counsel appearing for respondent No.2 submitted that the MOU under which the Lab Technicians were being supplied by the petitioner is a non-statutory contract and therefore the writ is not maintainable to enforce such a contract. He further submitted that since the petitioner was chosen without following proper procedure, the respondents want to call for fresh tenders and appoint an agency by following a transparent method. Therefore, the petitioner is not entitled to legitimately question the action of the respondents in terminating the services of the Lab Technicians supplied by it.

I have carefully considered the respective submissions of the learned counsel.

In the affidavit the petitioner has not given the details of respondent No.2 and its legal status inorder to maintain the writ petition. Respondent No.2 is described as a society. Unless the particulars of its composition and its legal status are given indicating that it falls within the expression of the 'State' or its

instrumentality under Article 12 of the Constitution of India, it cannot maintain the present writ petition.

Moreover, the alleged MOU dated 03.05.2002, on the basis of which the present writ petition is filed, is evidently a non-statutory contract as it is not traceable to any statutory provision. Ordinarily a writ petition for enforcement of a non-statutory contract is not maintainable. Further, in the counter-affidavit it is stated by respondent No.2 that in the year 2002 the normal procedure of choosing an agency through public advertisement was not followed and having realized the irregularity in the procedure, respondent No.2 decided to call for tenders to select an eligible agency to entrust with the work, which was already entrusted to the petitioner. The petitioner has not filed any rejoinder controverting the stand taken by respondent No.2 in its counter-affidavit.

Since the petitioner has not made out a case of infringement of its legally enforceable rights by invoking the public law remedy of a writ petition, no relief can be granted to the petitioner. If the impugned termination is in violation of any of the terms of the MOU, the petitioner is always left free to seek damages in an appropriate Court of law by way of a civil suit for unlawful termination of the contract.

With the above observations, the writ petition is dismissed. No order as to costs.

As a sequel to dismissal of the writ petition, WPMP.No.8883 of 2007 filed by the petitioner for interim relief is dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

Date: 22.10.2007
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